IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

MACA.No. 643 of 2003()

OPMV.467/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA
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APPELLANTS/PETITIONERS:
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1. ANITHA, W/O. LATE SUNIL, ARACKAL PUTHENPURA, THRIKKARIYOOR KARA, THRIKKARIYOOR VILLAGE.

2. ABHIJIT, S/O. LATE SUNIL (MINOR), DO. DO.

3. ANJALY, D/O. LATE SUNIL, (MINOR), DO. DO. (2 & 3 BEING MINORS REPRESENTED BY THIER MOTHER AND NEXT FRIEND ANITHA, W/O. LATE SUNIL).

BY ADV. SRI.JOSE THETTAYIL
SMT.RESHMI JACOB

RESPONDENTS/RESPONDENTS & PETITIONERS 4 AND 5 IN THE O.P.(MV):
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1. VARADAKUMAR, KAITHAKUZHI HOUSE, KADAKKARAPPILLY, CHERTHALA.

2. SIVADAS, KANDATHIL HOUSE, KADAKKARAPPILLY, CHERTHALA.

3. THE BRANCH MANAGER, THE NEW INDIA ASSURANCE CO.LTD., THOPPUMPADY, KOCHI.

4. RAJU, S/O. SANKARAN, ARACKAL PUTHENPURA, THRIKKARIYOOR KARA, THRIKARIYOOR VILLAGE.

5. LAKSHMIKUTTY, W/O. RAJU, ARACKAL PUTHENPURA, THRIKKARIYOOR KARA, THRIKKARIYOOR VILLAGE.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL FOR R3

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. KOSHY & K.P.BALACHANDRAN, JJ.

M.A.C.A. NO.643 OF 2003 (B)

Dated this the 1st day of June, 2007

JUDGMENT

Koshy, J.

A barber by profession at the age of 29 died in a motor accident leaving his young wife aged 28 years and son aged five years and daughter aged 2 months on 29.4.1999 in a motor accident dated 27.4.1999. The widow, two children and aged parents filed claim petition contending that they were solely depending on the income of the deceased for maintaining the family and Rs.10,00,000/- was claimed as compensation. Tribunal found that accident occurred due to the negligence of the driver of the vehicle insured by the 3rd respondent Insurance company. Against the claim of Rs.10,00,000/- compensation awarded was Rs.2,72,370/-. It is not disputed that claimant was a barber by profession. Ext.A8 is the certificate issued by the Secretary of Kerala State Barbers Association to the effect that the deceased was a member of the Association having experience

as a barber. Ext.A9 is the certificate which shows that the deceased was earning income at the rate of Rs.250/- per day. The person who issued Ext.A9 certificate was the Secretary of the Taluk Committee of the Kerala State Barbers Association and he was examined as PW1. According to PW1 and as per Ext.A9 certificate his income was Rs.250/- per day. Tribunal did not accept the same but took Rs.1,500/- as the notional income of the deceased. Deceased was aged 29 years and he was maintaining a large family. He was doing barber profession. Even for a non earning person as per the second schedule framed in 1994 notional income is Rs.15,000/- (Rs.1,250/- per month). It is pointed out by the claimant that even a manual unskilled worker in Kerala was getting more than Rs.150/- per day in 1999. Hence we are of the opinion that at least Rs.1,800/- can be fixed as monthly income. Children were very young at that time. Here deceased had died at his prime age and tribunal has taken 18 as the multiplier. We are not disturbing to the same. Even though it was vehimentally contended that the amount awarded under other heads are very low, we see no ground to enhance the same. If Rs.1200/- is taken for loss of dependency after deducting $^{1}/_{3}^{rd}$ from the income the dependency compensation

will be 1200 x 12 x 18 = 2,59,200/-. Tribunal has awarded only Rs.2,15,000/- for the loss of dependency. Therefore claimants are entitled to an amount of Rs.44,200/- with interest at the rate of 8% from the date of application till deposit over and above the compensation decreed by the tribunal. Additional compensation should be deposited by the Insurance company within three months from the date of receipt of the copy of this judgment. On deposit of the amount, Rs.5,000/- each can be withdrawn by appellants 4 and 5 father and mother and Rs.10,000/- by the 1st appellant widow. Balance amount including entire interest should be deposited in the name of 2nd appellant and 3rd appellant equally and 2nd appellant is allowed to withdraw the amount at the time when he become major and 3rd appellant is allowed to withdraw the amount at the time of her marriage. Accordingly this appeal is allowed partly.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN ,JUDGE

prp

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A. NO./2000

JUDGMENT

Dated:30th May, 2007